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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

W.P.No. 18545 of 1997

Nagesh Seshagiri Raikar,
aged about 60 years,
Agriculturist,
R/o Mundagod,
Uttara Kannada Dist.. Petitioner

(By Sri Ravi G.Sabhahit,
Advocate)

Vs. ✓

1. State of Karnataka
represented by the
Secretary to Government,
Revenue Department,
M.S.Buildings,
Bangalore-560 001.
2. The Deputy Commissioner,
Uttara Kannada Dist.,
Karwar.
3. Shanthan Salvadar
Mascernhas,
R/o Mundagod,
Uttara Kannada Dist.,
presently staying at
Court Road, Hubli.. Respondents

(By Sri F.V.Patil,
Adv. for Respondent-3;
Sri B.E.Kotian,
Addl. Govt. Advocate
for Respondents 1 & 2)

Writ Petition filed under Article 226 of the
Constitution of India with an affidavit seek-
ing quashing of the order dated 25-4-1997
passed by the second respondent vide Annexure-D,
etc.

This petition coming on for orders before Court
this day, the Court made the following:

O R D E R

Though this petition is listed for orders, with the consent of learned Counsel appearing for the parties, it is taken up for final hearing and disposed of by this order.

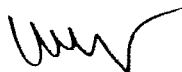
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2. In this petition, the petitioner has prayed for quashing the order dated 25th of April 1997, a copy of which has been produced as Annexure-D, passed by the second respondent confirming the order dated 12th of September 1995, a copy of which has been produced as Annexure-A, passed by the Assistant Commissioner, Sirsi, granting conversion of land measuring 3 acres 9 guntas in Survey No.175/A and 1 acre 32 guntas in Survey No.175/B situated at Mundagod Town, for non-agricultural purpose.

3. Sri Ravi Sabhahit, learned Counsel appearing for the petitioner, submitted that the petitioner is an occupant in respect of the lands, referred to above; and under these circumstances, the Assistant Commissioner had totally erred in law in ordering conversion



without hearing the petitioner, who is an occupant of the said lands. Elaborating this submission, Sri Sabhahit pointed out that under Section 95 of the Land Revenue Act, a request for conversion of the land from agricultural purpose to non-agricultural purpose may be made only by an occupant of the land; and the third respondent not being an occupant in respect of the lands in question, was not entitled to seek for conversion of the lands in question. In support of the plea that the petitioner is an occupant of the lands in question, he referred to me the reports dated 22nd of November 1995 and 5th of March 1996 given by the Revenue Inspector, wherein he has stated that the petitioner is an occupant in respect of the lands in question. He also further pointed out that the petitioner has already filed a suit in O.S.No.18/97, on the file of the Court of Civil Judge at Sirsi, for a declaration that he has perfected his title to the lands in question by adverse possession; and, therefore, the order impugned is liable to be quashed on the short ground that the petitioner, who is an

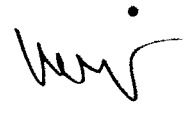


occupant in respect of the lands in question, was not heard before granting conversion of the lands in question.

4. Sri F.V.Patil, learned Counsel appearing for the third respondent, submitted that the claim made by the petitioner that he is an occupant of the lands in question is totally false and baseless. He further submitted that in the absence of any material placed by the petitioner at least before this Court to prima facie show that he is an occupant in respect of the lands in question, it would result in great injustice to the third respondent if the order of conversion granted by the Assistant Commissioner is quashed by this Court at the instance of the petitioner. He also submitted that before an order of conversion was granted, an enquiry was held and the petitioner, in the course of enquiry, has signed the Panchanama (Mahazar prepared by the Revenue Inspector). In this connection, he referred to me a copy of the Mahazar, which has been produced as Annexure-R1.



5. Admittedly, the suit filed by the petitioner for declaration that he has perfected his title by adverse possession, is pending adjudication before the Civil Court. Prima-facie, as rightly pointed out by the learned Counsel for the third respondent, the petitioner has not placed any material before this Court, except the reference to the reports of the Revenue Inspector dated 22nd of November 1995 and 5th of March 1996 given subsequent to the order of conversion, in support of the plea that the petitioner is an occupant in respect of the lands in question. Since the dispute regarding the title to the lands in question is pending adjudication before the Civil Court, I find that it is inappropriate for me to go into the rival contention of the parties in a greater detail except observing that this is not a fit case for interference by this Court in exercise of its extraordinary jurisdiction either under Article 226 or under Article 227 of the Constitution of India.



6. It is needless to observe that if ultimately the petitioner succeeds before the Civil Court, the order of conversion will be of no avail to the third respondent. Further, it is also needless to observe that the Civil Court is required to consider the respective claims of the parties on the basis of the evidence that may be placed before it and without being influenced by the order of conversion granted by the Assistant Commissioner in favour of the third respondent.

7. In the light of the discussion made above, I do not find any merit in this petition.

8. Accordingly, this petition is dismissed subject to the observations made above.

9. Sri B.E.Kotian, learned Additional Government Advocate, is permitted to file his memo of appearance within four weeks from

Sd/-
JUDGE

